

MAR 06 2006

1. FUNCTION OF JURY

For The Northern Mariana Islands
By _____
(Deputy Clerk)

MEMBERS OF THE JURY, NOW THAT YOU HAVE HEARD ALL THE EVIDENCE, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE IN THE JURY ROOM FOR YOU TO CONSULT.

IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN THE CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE IT TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH IT OR NOT. AND YOU MUST NOT BE INFLUENCED BY ANY PERSONAL LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR SYMPATHY. THAT MEANS THAT YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE BEFORE YOU. YOU WILL RECALL THAT YOU TOOK AN OATH PROMISING TO DO SO AT THE BEGINNING OF THE CASE.

IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS; THEY ARE ALL EQUALLY IMPORTANT. YOU MUST NOT READ INTO THESE INSTRUCTIONS OR INTO ANYTHING THE COURT MAY HAVE SAID OR DONE ANY SUGGESTION AS TO WHAT VERDICT YOU SHOULD RETURN—THAT IS A MATTER ENTIRELY UP TO YOU.

2. THE UNITED STATES AS A PARTY

YOU ARE TO PERFORM THE DUTY OF FINDING THE FACTS WITHOUT BIAS OR PREJUDICE AS TO ANY PARTY. YOU ARE TO PERFORM YOUR FINAL DUTY IN AN ATTITUDE OF COMPLETE FAIRNESS AND IMPARTIALITY. THE CASE IS IMPORTANT TO THE GOVERNMENT FOR THE ENFORCEMENT OF CRIMINAL LAWS IS A MATTER OF PRIME IMPORTANCE TO THE COMMUNITY. EQUALLY, IT IS IMPORTANT TO THE DEFENDANT WHO IS CHARGED WITH SERIOUS CRIMES. THE FACT THAT THE PROSECUTION IS BROUGHT IN THE NAME OF THE UNITED STATES OF AMERICA ENTITLES THE GOVERNMENT TO NO GREATER CONSIDERATION THAT THAT ACCORDED TO ANY OTHER PARTY TO A LITIGATION. BY THE SAME TOKEN, IT IS ENTITLED TO NO LESS CONSIDERATION. ALL PARTIES, WHETHER THE GOVERNMENT OR INDIVIDUALS, STAND AS EQUALS AT THE BAR OF JUSTICE.

3. THE GOVERNMENT WINS REGARDLESS OF VERDICT

THE QUESTION BEFORE YOU CAN NEVER BE WHETHER THE GOVERNMENT WILL WIN OR LOSE THE CASE. THE GOVERNMENT WINS WHENEVER JUSTICE IS DONE. JUSTICE IS ACHIEVED WHEN YOU, THE JURY, RETURN YOUR VERDICT REGARDLESS OF WHETHER THE VERDICT IS GUILTY OR NOT GUILTY.

4. INDICTMENT IS NOT EVIDENCE

**THE INDICTMENT IS NOT EVIDENCE. THE DEFENDANT HAS
PLEADED NOT GUILTY TO THE CHARGE. THE DEFENDANT IS
PRESUMED TO BE INNOCENT AND DOES NOT HAVE TO TESTIFY OR
PRESENT ANY EVIDENCE TO PROVE INNOCENCE. THE GOVERNMENT
HAS THE BURDEN OF PROVING EVERY ELEMENT OF THE CHARGE
BEYOND A REASONABLE DOUBT.**

5. RIGHT NOT TO TESTIFY

A DEFENDANT IN A CRIMINAL CASE HAS A CONSTITUTIONAL RIGHT NOT TO TESTIFY. NO PRESUMPTION OF GUILT MAY BE RAISED, AND NO INFERENCE OF ANY KIND MAY BE DRAWN, FROM THE FACT THAT THE DEFENDANT DID NOT TESTIFY.

6. PRESUMPTION OF INNOCENCE

AS I TOLD YOU AT THE OUTSET OF THE TRIAL, THIS IS A CRIMINAL CASE IN WHICH THE DEFENDANT IS CHARGED WITH VIOLATING CERTAIN LAWS OF THE UNITED STATES. THE CHARGES, HOWEVER, ARE ONLY ALLEGATIONS. THE DEFENDANT IS PRESUMED TO BE INNOCENT OF THOSE CHARGES UNLESS AND UNTIL YOU, THE JURY, FIND BEYOND A REASONABLE DOUBT THAT DEFENDANT IS GUILTY OF ANY OFFENSE ALLEGED IN THE INDICTMENT.

7. BURDEN OF PROOF

IN A CRIMINAL CASE, THE GOVERNMENT ALWAYS HAS THE BURDEN OF PROOF. TO OVERCOME THE PRESUMPTION OF INNOCENCE AND PROVE THE DEFENDANT GUILTY OF AN OFFENSE, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT EACH AND EVERY ELEMENT OF THAT OFFENSE AS CHARGED IN THE INDICTMENT.

8. REASONABLE DOUBT - DEFINITION

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY. IT IS NOT REQUIRED THAT THE GOVERNMENT PROVE GUILT BEYOND ALL POSSIBLE DOUBT.

A REASONABLE DOUBT IS A DOUBT BASED UPON REASON AND COMMON SENSE AND IS NOT BASED PURELY ON SPECULATION. IT MAY ARISE FROM A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, OR FROM LACK OF EVIDENCE.

IF, AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF AFTER A CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE, YOU ARE CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT GUILTY.

9. EVIDENCE - DEFINITION

**THE EVIDENCE FROM WHICH YOU ARE TO DECIDE THE FACTS
OF THIS CASE ARE:**

- 1) THE SWORN TESTIMONY OF ANY WITNESS**
- 2) THE EXHIBITS WHICH HAVE BEEN RECEIVED INTO
EVIDENCE; AND**
- 3) ANY FACTS TO WHICH THE LAWYERS HAVE STIPULATED**

10. WHAT IS NOT EVIDENCE

IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE EVIDENCE THAT THE COURT HAS RECEIVED, THAT IS, THE TESTIMONY, EXHIBITS, AND ANY STIPULATIONS. CERTAIN THINGS, HOWEVER, ARE NOT EVIDENCE AND YOU MAY NOT CONSIDER THEM IN DECIDING THE FACTS. I WILL LIST THEM FOR YOU:

1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY SAY IN THEIR OPENING STATEMENTS, CLOSING ARGUMENTS, AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS STATE THEM, YOUR MEMORY OF THEM CONTROLS.

2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE QUESTION, THE OBJECTION, OR THE COURT'S RULING ON IT.

3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST NOT BE CONSIDERED. IN ADDITION, SOME TESTIMONY AND EXHIBITS HAVE BEEN RECEIVED ONLY FOR A LIMITED PURPOSE;

WHERE I HAVE GIVEN A LIMITING INSTRUCTION, YOU MUST FOLLOW IT.

4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED AT THE TRIAL.

11. DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO KINDS OF EVIDENCE, DIRECT AND CIRCUMSTANTIAL. DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY OF AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE, THAT IS, PROOF OF A CHAIN OF FACTS FROM WHICH YOU COULD FIND THAT ANOTHER FACT EXISTS, EVEN THOUGH IT HAS NOT BEEN PROVED DIRECTLY. YOU ARE TO CONSIDER BOTH KINDS OF EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT TO BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY EVIDENCE.

12. CONSIDERATION OF THE EVIDENCE

IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.

IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE INTO ACCOUNT:

- 1) THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS TESTIFIED TO;**
- 2) THE WITNESS' MEMORY;**
- 3) THE WITNESS' MANNER WHILE TESTIFYING;**
- 4) THE WITNESS' INTEREST IN THE OUTCOME OF THE CASE AND ANY BIAS OR PREJUDICE;**
- 5) WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS' TESTIMONY;**
- 6) THE REASONABLENESS OF THE WITNESS' TESTIMONY IN LIGHT OF ALL THE EVIDENCE; AND**
- 7) ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.**

THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.

13. EVIDENCE – OPINION TESTIMONY OF LAY WITNESS

IN DETERMINING THE WEIGHT TO BE GIVEN TO AN OPINION EXPRESSED BY ANY WITNESS WHO DID NOT TESTIFY AS AN EXPERT WITNESS, YOU MAY CONSIDER THE PERSON'S CREDIBILITY, THE EXTENT OF THE PERSON'S OPPORTUNITY TO PERCEIVE THE MATTERS UPON WHICH THE OPINION IS BASED AND THE REASONS, IF ANY, GIVEN FOR IT. YOU ARE NOT REQUIRED TO ACCEPT SUCH AN~~OPINION~~ BUT SHOULD GIVE IT THE WEIGHT, IF ANY TO WHICH YOU FIND IT ENTITLED.

14. EVIDENCE – IMPEACHMENT OF A WITNESS

YOU HAVE HEARD EVIDENCE THAT CERTAIN WITNESSES GAVE OR MADE PRIOR STATEMENTS WHICH MAY HAVE BEEN INCONSISTENT WITH TESTIMONY GIVEN DURING TRIAL. YOU MAY CONSIDER THIS EVIDENCE, ALONG WITH OTHER EVIDENCE YOU FIND PERTINENT, IN DECIDING WHETHER OR NOT TO BELIEVE THE WITNESS AND HOW MUCH WEIGHT TO GIVE THE TESTIMONY OF THAT WITNESS.

15. EVIDENCE - STATEMENTS BY DEFENDANT

YOU HAVE HEARD TESTIMONY THAT THE DEFENDANT MADE CERTAIN STATEMENTS. IT IS FOR YOU TO DECIDE 1) WHETHER THE DEFENDANT MADE ANY STATEMENT AND 2) IF SO, HOW MUCH WEIGHT TO GIVE IT. IN MAKING THOSE DECISIONS, YOU SHOULD CONSIDER ALL ~~OFF~~ THE EVIDENCE ABOUT THE STATEMENT, INC~~LU~~CLUDING THE CIRCUMSTANCES UNDER WHICH IT MAY HAVE BEEN MADE.

16. TRIAL ON CHARGES IN INDICTMENT

THE DEFENDANT IS ON TRIAL ONLY FOR THE CRIMES CHARGED IN THE INDICTMENT, NOT FOR ANY OTHER ACTIVITIES.

YOU HAVE HEARD TESTIMONY THAT SOME OF THE WITNESSES KNEW OTHER PEOPLE WHO RECEIVED DISASTER UNEMPLOYMENT ASSISTANCE BENEFITS. FLAVIAN HOCOG AND LORY WEILBACHER TESTIFIED THAT KNEW OTHERS WHO HAD RECEIVED BENEFITS. IT IS NOT BEFORE YOU WHETHER THE APPLICATIONS OF THOSE OTHER SPECIFIC INDIVIDUALS WERE TRUE OR FALSE.

YOUR DUTY IS TO DECIDE ONLY THE CHARGES CONCERNING THE APPLICATIONS SPECIFICALLY CONTAINED IN THE INDICTMENT BASED ON A CONSIDERATION OF ALL THE EVIDENCE AND NOTHING ELSE.

17. EACH COUNT A SEPARATE CRIME

A SEPARATE CRIME IS CHARGED AGAINST THE DEFENDANT IN EACH COUNT. THE CHARGES HAVE BEEN JOINED FOR TRIAL. YOU MUST DECIDE THE CASE ON EACH CRIME CHARGED AGAINST THE DEFENDANT SEPARATELY. YOUR VERDICT ON ANY COUNT AS TO THE DEFENDANT SHOULD NOT CONTROL YOUR VERDICT ON ANY OTHER COUNT.

ALL OF THE INSTRUCTIONS APPLY TO EACH COUNT UNLESS I INSTRUCT YOU OTHERWISE.

18. TESTIMONY UNDER NON-PROSECUTION AGREEMENT

YOU HAVE HEARD TESTIMONY FROM WITNESSES WHO TESTIFIED PURSUANT TO A NON-PROSECUTION AGREEMENT. THAT TESTIMONY WAS GIVEN IN EXCHANGE FOR A PROMISE BY THE GOVERNMENT THAT THE WITNESS WILL NOT BE PROSECUTED FOR CERTAIN CRIMES THE WITNESS MAY HAVE COMMITTED.

FOR THESE REASONS, IN EVALUATING THE WITNESS'S TESTIMONY, YOU SHOULD CONSIDER THE EXTENT TO WHICH OR WHETHER THE WITNESS'S TESTIMONY MAY HAVE BEEN INFLUENCED BY THAT FACTOR. IN ADDITION, YOU SHOULD EXAMINE THE WITNESS'S TESTIMONY WITH GREATER CAUTION THAN THAT OF OTHER WITNESSES.

YOU SHOULD ASK YOURSELVES WHETHER THESE WITNESSES WOULD BENEFIT MORE BY LYING OR TELLING THE TRUTH. WAS THEIR TESTIMONY MADE UP IN ANY WAY BECAUSE THEY BELIEVED OR HOPED THEY WOULD SOMEHOW RECEIVE FAVORABLE TREATMENT BY TESTIFYING FALSELY? OR DID THEY BELIEVE THAT THEIR INTERESTS WOULD BEST BE SERVED BY TESTIFYING TRUTHFULLY? IF YOU BELIEVE A WITNESS WAS MOTIVATED BY HOPES OF PERSONAL GAIN, WAS THE MOTIVATION ONE WHICH WOULD CAUSE THE WITNESS TO LIE OR WAS IT ONE WHICH WOULD

**CAUSE THE WITNESS TO TELL THE TRUTH? DID THIS MOTIVATION
COLOR HIS TESTIMONY?**

**IN SUM, YOU SHOULD LOOK AT ALL OF THE EVIDENCE IN
DECIDING WHAT CREDENCE AND WHAT WEIGHT, IF ANY, TO GIVE TO
THESE WITNESSES.**

19. CONSPIRACY - ELEMENTS OF THE OFFENSE

COUNT 1 OF THE INDICTMENT CHARGES THE DEFENDANT WITH CONSPIRACY COMMIT OFFENSES AGAINST THE UNITED STATES, IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371. IN ORDER FOR THE DEFENDANT TO BE FOUND GUILTY OF THE CHARGE OF CONSPIRACY, THE GOVERNMENT MUST PROVE EACH OF THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

FIRST, BEGINNING IN OR ABOUT FEBRUARY, 2003, UNTIL IN OR ABOUT JUNE, 2003, THERE WAS AN AGREEMENT BETWEEN TWO OR MORE PERSONS TO COMMIT OFFENSES AGAINST THE UNITED STATES BY SUBMITTING FALSE CLAIMS AGAINST THE UNITED STATES AND BY SUBMITTING FALSE STATEMENTS FOR THE PURPOSE OF OBSTRUCTING AND IMPEDING A LEGITIMATE GOVERNMENT FUNCTION AS CHARGED IN THE INDICTMENT;

SECOND, THE DEFENDANT WAS OR BECAME A MEMBER OF THE CONSPIRACY KNOWING OF AT LEAST ONE OF ITS OBJECTS AND INTENDING TO HELP ACCOMPLISH IT.

THIRD, ONE OF THE MEMBERS OF THE CONSPIRACY PERFORMED AT LEAST ONE OVERT ACT FOR THE PURPOSE OF CARRYING OUT THE CONSPIRACY, WITH ALL OF YOU AGREEING ON A PARTICULAR OVERT ACT THAT YOU FIND WAS COMMITTED.

I SHALL DISCUSS WITH YOU BRIEFLY THE LAW RELATING TO EACH OF THESE ELEMENTS.

20. CONSPIRACY – NATURE OF CONSPIRACY

A CONSPIRACY IS A KIND OF CRIMINAL PARTNERSHIP—AN AGREEMENT OF TWO OR MORE PERSONS TO COMMIT ONE OR MORE CRIMES. THE CRIME OF CONSPIRACY IS THE AGREEMENT TO DO SOMETHING UNLAWFUL; IT DOES NOT MATTER WHETHER THE CRIME AGREED UPON WAS COMMITTED.

21. CONSPIRACY – NATURE OF AGREEMENT

FOR A CONSPIRACY TO HAVE EXISTED, IT IS NOT NECESSARY THAT THE CONSPIRATORS MADE A FORMAL AGREEMENT OR THAT THEY AGREED ON EVERY DETAIL OF THE CONSPIRACY. IT IS NOT ENOUGH, HOWEVER, THAT THEY SIMPLY MET, DISCUSSED MATTERS OF COMMON INTEREST, ACTED IN SIMILAR WAYS, OR PERHAPS HELPED ONE ANOTHER. YOU MUST FIND THAT THERE WAS A PLAN TO SUBMIT FALSE CLAIMS AND TO MAKE FALSE STATEMENTS AS ALLEGED IN THE INDICTMENT AS AN OBJECT OF THE CONSPIRACY WITH ALL OF YOU AGREEING THAT THIS WAS THE UNLAWFUL OBJECT THAT THE CONSPIRATORS AGREED TO ACCOMPLISH AND WITH EACH OF YOU AGREEING AS TO THE PERSON OR PERSONS WITH WHOM THE DEFENDANT CONSPIRED.

22. CONSPIRACY – MEMBERSHIP IN CONSPIRACY

ONE BECOMES A MEMBER OF A CONSPIRACY BY WILLFULLY PARTICIPATING IN THE UNLAWFUL PLAN WITH THE INTENT TO ADVANCE OR FURTHER SOME OBJECT OR PURPOSE OF THE CONSPIRACY, EVEN THOUGH THE PERSON DOES NOT HAVE FULL KNOWLEDGE OF ALL THE DETAILS OF THE CONSPIRACY. FURTHERMORE, ONE WHO WILLFULLY JOINS AN EXISTING CONSPIRACY IS AS RESPONSIBLE FOR IT AS THE ORIGINATORS.

ON THE OTHER HAND, ONE WHO HAS NO KNOWLEDGE OF A CONSPIRACY, BUT HAPPENS TO ACT IN A WAY WHICH FURTHERS SOME OBJECT OR PURPOSE OF THE CONSPIRACY, DOES NOT THEREBY BECOME A CONSPIRATOR. SIMILARLY, A PERSON DOES NOT BECOME A CONSPIRATOR MERELY BY ASSOCIATING WITH ONE OR MORE PERSONS WHO ARE CONSPIRATORS, KNOWING OF THE EXISTENCE OF THE CONSPIRACY, BEING PRESENT WHERE A CRIME TAKES PLACE OR IS DISCUSSED, HAVING KNOWLEDGE OF CRIMINAL CONDUCT OR APPROVING OF THE CONSPIRACY.

23. CONSPIRACY – OVERT ACT

AS WITH EACH OF THE OFFENSES CHARGED, IN ORDER TO FIND THE DEFENDANT GUILTY, YOU MUST FIND THAT THE GOVERNMENT HAS PROVEN EACH ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT. THE OFFENSE OF CONSPIRACY, IN ADDITION TO THE OTHER ELEMENTS THAT I HAVE DISCUSSED, HAS AS ONE OF ITS ELEMENTS THAT AT LEAST ONE OF THE CO-CONSPIRATORS COMMITTED AT LEAST ONE OVERT ACT.

AN OVERT ACT DOES NOT ITSELF HAVE TO BE UNLAWFUL. A LAWFUL ACT MAY BE AN ELEMENT OF A CONSPIRACY IF IT WAS DONE FOR THE PURPOSE OF CARRYING OUT THE CONSPIRACY. THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT THE DEFENDANT PERSONALLY DID ONE OF THE OVERT ACTS.

24. CONSPIRACY – DURATION AND NATURE OF PARTICIPATION

A CONSPIRACY MAY CONTINUE FOR A LONG PERIOD OF TIME AND MAY INCLUDE THE PERFORMANCE OF MANY TRANSACTIONS. IT IS NOT NECESSARY THAT ALL MEMBERS OF THE CONSPIRACY JOIN IT AT THE SAME TIME, AND ONE MAY BECOME A MEMBER OF A CONSPIRACY WITHOUT FULL KNOWLEDGE OF ALL THE DETAILS OF THE UNLAWFUL SCHEME OR THE NAMES, IDENTITIES, OR LOCATIONS OF ALL OF THE OTHER MEMBERS.

EVEN THOUGH A DEFENDANT MAY NOT HAVE DIRECTLY CONSPIRED WITH THE OTHER CONSPIRATORS IN THE OVERALL SCHEME, THE DEFENDANT HAS, IN EFFECT, AGREED TO PARTICIPATE IN THE CONSPIRACY IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT:

(1) THE DEFENDANT DIRECTLY CONSPIRED WITH ONE OR MORE CONSPIRATORS TO CARRY OUT AT LEAST ONE OF THE OBJECTS OF THE CONSPIRACY,

(2) THE DEFENDANT KNEW OR HAD REASON TO KNOW THAT OTHER CONSPIRATORS WERE INVOLVED WITH THOSE WITH WHOM THE DEFENDANT DIRECTLY CONSPIRED, AND

(3) THE DEFENDANT HAD REASON TO BELIEVE THAT WHATEVER BENEFITS THE DEFENDANT MIGHT GET FROM THE CONSPIRACY WERE PROBABLY DEPENDENT UPON THE SUCCESS OF THE ENTIRE VENTURE.

**IT IS NO DEFENSE THAT A PERSON'S PARTICIPATION IN A
CONSPIRACY WAS MINOR OR FOR A SHORT PERIOD OF TIME.**

25. CONSPIRACY – AS CHARGED IN THE INDICTMENT

YOU MUST DECIDE WHETHER THE CONSPIRACY CHARGED IN THE INDICTMENT EXISTED, AND, IF IT DID, WHO AT LEAST SOME OF ITS MEMBERS WERE. IF YOU FIND THAT THE CONSPIRACY CHARGED DID NOT EXIST, THEN YOU MUST RETURN A NOT GUILTY VERDICT ON THAT CHARGE, EVEN THOUGH YOU MAY FIND THAT SOME OTHER CONSPIRACY EXISTED. SIMILARLY, IF YOU FIND THAT ANY DEFENDANT WAS NOT A MEMBER OF THE CHARGED CONSPIRACY, THEN YOU MUST FIND THAT DEFENDANT NOT GUILTY, EVEN THOUGH THAT DEFENDANT MAY HAVE BEEN A MEMBER OF SOME OTHER CONSPIRACY.

26. CONSPIRACY – OBJECT OF THE CONSPIRACY

COUNT ONE OF THE INDICTMENT CHARGES, AS ONE OBJECT OF THE CONSPIRACY, THAT THE DEFENDANT CONSPIRED TO SUBMIT FALSE CLAIMS AGAINST THE UNITED STATES IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 287.

TO PROVE THE CONSPIRACY ALLEGED IN THE INDICTMENT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED AND AGREED TO COMMIT THE SUBSTANTIVE OFFENSE OF SUBMITTING FALSE CLAIMS AGAINST THE UNITED STATES. THAT OFFENSE HAS THREE ELEMENTS.

FIRST, PRESENTING A CLAIM AGAINST THE UNITED STATES;

SECOND, KNOWING SUCH CLAIM TO BE FALSE; AND

THIRD, THAT THE CLAIM WAS MATERIAL, THAT IS, IT COULD HAVE INFLUENCED THE AGENCY'S DECISIONS OR ACTIVITIES.

A CLAIM INVOLVES A DEMAND FOR MONEY OR AN ATTEMPT TO CAUSE THE UNITED STATES TO PAY OUT MONEY.

A PERSON MAY BE GUILTY OF SUBMITTING FALSE CLAIMS AGAINST THE UNITED STATES EVEN IF SHE USES AN INNOCENT MIDDLE MAN TO ACTUALLY PASS THE CLAIMS TO THE UNITED STATES.

THE GOVERNMENT DOES NOT NEED TO PROVE THAT THE DEFENDANT ACTUALLY SUBMITTED FALSE CLAIMS AGAINST THE

**UNITED STATES; THE GOVERNMENT MUST PROVE THAT THE
DEFENDANT CONSPIRED TO DO SO.**

27. CONSPIRACY – MULTIPLE OBJECTS

A CONSPIRACY MAY HAVE MORE THAN ONE OBJECT. COUNT ONE OF THE INDICTMENT ALSO ALLEGES THAT DEFENDANT CONSPIRED TO USE A DOCUMENT CONTAINING A FALSE STATEMENT WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1001.

TO PROVE THE CONSPIRACY ALLEGED IN THE INDICTMENT, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT INTENDED AND AGREED TO COMMIT THE SUBSTANTIVE OFFENSE OF SUBMITTING FALSE CLAIMS AGAINST THE UNITED STATES. THAT OFFENSE HAS THREE ELEMENTS.

FIRST, USING A WRITING OR DOCUMENT WHICH CONTAINED A FALSE STATEMENT IN A MATTER WITHIN THE JURISDICTION OF THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION;

SECOND, ACTING WILLFULLY, THAT IS DELIBERATELY AND WITH KNOWLEDGE THAT THE WRITING OR DOCUMENT WAS UNTRUE; AND

THIRD, THE WRITING OR DOCUMENT WAS MATERIAL TO THE ACTIVITIES OR DECISIONS OF THE UNITED STATES FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION.

AS WITH THE OTHER OBJECT OF THE CONSPIRACY ALLEGED IN THE INDICTMENT, A PERSON MAY BE GUILTY OF SUBMITTING A FALSE STATEMENT TO THE UNITED STATES EVEN IF SHE USES AN INNOCENT MIDDLE MAN ACTUALLY TO PASS THE STATEMENT TO THE UNITED STATES.

ALSO, AS WITH THE OTHER OBJECT OF THE CONSPIRACY ALLEGED IN THE INDICTMENT, THE GOVERNMENT DOES NOT NEED TO PROVE THAT THE DEFENDANT ACTUALLY SUBMITTED FALSE STATEMENTS TO THE UNITED STATES; THE GOVERNMENT MUST PROVE ONLY THAT THE DEFENDANT CONSPIRED TO DO SO.

IT IS NOT NECESSARY FOR THE GOVERNMENT TO PROVE BOTH OBJECTS OF THE CONSPIRACY. IT IS SUFFICIENT IF THE GOVERNMENT PROVES ONLY ONE OF THE OBJECTS ALLEGED IN THE INDICTMENT. THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT, HOWEVER, THAT THE DEFENDANT CONSPIRED TO COMMIT AT LEAST ONE OF THE OBJECTS ALLEGED IN THE INDICTMENT AND, BEFORE YOU MAY FIND THE DEFENDANT GUILTY OF THE OFFENSE OF CONSPIRACY, ALL OF YOU MUST BE UNANIMOUS AS TO WHICH OBJECT OR OBJECTS, IF ANY, THE DEFENDANT CONSPIRED TO COMMIT.

28. MATERIALITY - DEFINITION

**A STATEMENT IS MATERIAL IF IT COULD HAVE INFLUENCED THE
AGENCY'S DECISIONS OR ACTIVITIES.**

29. FALSE STATEMENTS – ELEMENTS OF THE OFFENSE

COUNTS TWO THROUGH EIGHT OF THE INDICTMENT ALLEGE THAT DEFENDANT COMMITTED THE SUBSTANTIVE OFFENSE OF MAKING TO THE UNITED STATES OR ONE OF ITS AGENCIES A FALSE STATEMENT WITHIN THE JURISDICTION OF THAT AGENCY IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1001.

TO PROVE THE SUBSTANTIVE OFFENSE OF MAKING FALSE STATEMENTS, THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT EACH OF THREE ELEMENTS.

FIRST, THAT DEFENDANT MADE OR USED A WRITING OR DOCUMENT WHICH CONTAINED A FALSE STATEMENT IN A MATTER WITHIN THE JURISDICTION OF THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION;

SECOND, THAT THE DEFENDANT ACTED WILLFULLY, THAT IS DELIBERATELY AND WITH KNOWLEDGE THAT THE WRITING OR DOCUMENT WAS UNTRUE; AND

THIRD, THAT THE WRITING OR DOCUMENT WAS MATERIAL TO THE ACTIVITIES OR DECISIONS OF THE UNITED STATES FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION.

30. KNOWINGLY - DEFINITION

AN ACT IS DONE KNOWINGLY IF THE DEFENDANT IS AWARE OF THE ACT AND DOES NOT ACT THROUGH IGNORANCE, MISTAKE, OR ACCIDENT. THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT THE DEFENDANT KNEW THAT HIS ACTS OR OMISSIONS WERE UNLAWFUL. YOU MAY CONSIDER EVIDENCE OF THE DEFENDANT'S WORDS, ACTS, OR OMISSIONS, ALONG WITH ALL THE OTHER EVIDENCE, IN DECIDING WHETHER THE DEFENDANT ACTED KNOWINGLY.

31. WILFULLY - DEFINITION

**AN ACT IS DONE WILFULLY IF THE DEFENDANT ACTS
KNOWINGLY AND INTENTIONALLY AND NOT THROUGH IGNORANCE,
MISTAKE, OR ACCIDENT.**

32. ON OR ABOUT - DEFINITION

NOW, I WANT TO SAY A WORD ABOUT THE DATES THAT HAVE BEEN MENTIONED IN THE INDICTMENT.

THE INDICTMENT CHARGES THAT THE CRIMES OCCURRED ON APPROXIMATELY A CERTAIN DATE. THE GOVERNMENT DOES NOT HAVE TO PROVE THAT THE CRIMES HAPPENED ON THAT EXACT DATE. BUT THE GOVERNMENT MUST PROVE THAT THE CRIMES OCCURRED REASONABLY CLOSE TO THAT DATE.

33. PUNISHMENT IRRELEVANT

THE PUNISHMENT PROVIDED BY LAW FOR THIS CRIME IS FOR THE COURT TO DECIDE. YOU MAY NOT CONSIDER PUNISHMENT IN DECIDING WHETHER THE GOVERNMENT HAS PROVED ITS CASE AGAINST THE DEFENDANTS BEYOND A REASONABLE DOUBT.

34. CONDUCT OF DELIBERATIONS

WHEN YOU BEGIN YOUR DELIBERATIONS, YOU SHOULD ELECT ONE MEMBER OF THE JURY AS YOUR FOREPERSON. THAT PERSON WILL PRESIDE OVER THE DELIBERATIONS AND SPEAK FOR YOU HERE IN COURT.

YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT, WHETHER GUILTY OR NOT GUILTY, MUST BE UNANIMOUS.

EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS, AND LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A DECISION SIMPLY BECAUSE OTHER JURORS THINK IT IS RIGHT.

IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT BUT, OF COURSE, ONLY IF EACH OF YOU CAN DO SO AFTER HAVING MADE YOUR OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE SIMPLY TO REACH A VERDICT.

35. BASIS OF VERDICT

**YOUR VERDICT MUST BE BASED SOLELY ON THE EVIDENCE AND
ON THE LAW AS I HAVE GIVEN IT TO YOU IN THESE INSTRUCTIONS.
HOWEVER, NOTHING THAT I HAVE SAID OR DONE IS INTENDED TO
SUGGEST WHAT YOUR VERDICT SHOULD BE—THAT IS ENTIRELY FOR
YOU TO DECIDE.**

36. JUROR NOTES

**SOME OF YOU HAVE TAKEN NOTES DURING THE TRIAL.
WHETHER OR NOT YOU TOOK NOTES, YOU SHOULD RELY ON YOUR
OWN MEMORY OF WHAT WAS SAID. NOTES ARE ONLY TO ASSIST
YOUR MEMORY. YOU SHOULD NOT BE OVERLY INFLUENCED BY
THE NOTES.**

37. VERDICT FORM

A VERDICT FORM HAS BEEN PREPARED FOR YOU. AFTER YOU HAVE REACHED UNANIMOUS AGREEMENT ON A VERDICT, YOUR FOREPERSON WILL FILL IN THE FORM THAT HAS BEEN GIVEN TO YOU, SIGN AND DATE IT, AND ADVISE THE BAILIFF THAT YOU ARE READY TO RETURN TO THE COURTROOM.

38. COMMUNICATION WITH THE COURT

IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE BAILIFF, SIGNED BY YOUR FOREPERSON OR BY ONE OR MORE MEMBERS OF THE JURY. NO MEMBER OF THE JURY SHOULD EVER ATTEMPT TO COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING, AND I WILL RESPOND TO THE JURY CONCERNING THE CASE ONLY IN WRITING, OR HERE IN OPEN COURT. IF YOU SEND OUT A QUESTION, I WILL CONSULT WITH THE LAWYERS BEFORE ANSWERING IT, WHICH MAY TAKE SOME TIME. YOU MAY CONTINUE YOUR DELIBERATIONS WHILE WAITING FOR THE ANSWER TO ANY QUESTION. REMEMBER THAT YOU ARE NOT TO TELL ANYONE—INCLUDING ME—HOW THE JURY STANDS, NUMERICALLY OR OTHERWISE, ON THE QUESTION OF THE GUILT OF THE DEFENDANT, UNTIL AFTER YOU HAVE REACHED A UNANIMOUS VERDICT OR HAVE BEEN DISCHARGED.